



## Town of Walpole

### Commonwealth of Massachusetts Zoning Board of Appeals

**Zoning Board of Appeals**  
John Lee, Chairman  
Susanne Murphy, Vice Chair  
Robert Fitzgerald, Clerk  
Mary Jane Coffey, Member  
Drew Delaney, Member  
David Anderson, Associate Member

#### DECISION- WALPOLE BOARD OF APPEALS CASE NO. 20-36

#### APPLICANT

Nancy Webster, KW Steel Structures LLC

#### LOCATION OF PROPERTY INVOLVED:

52 School Street  
Walpole Assessors Map 26, Parcel 239

#### APPLICATION:

An ADMINISTRATIVE APPEAL of the Zoning Enforcement Officer's Violation Notice and Cease & Desist under Section 3.2. of the Zoning Bylaws: Failure to secure a Certificate of Occupancy for the new use of metal & steel manufacturing; Section 5B of the Zoning Bylaws: Schedule of Use Regulations: Heavy manufacturing of steel not allowed in the LM District, resulting in a noise violation for the production of loud and offensive noise to the abutters of the business (KW Steel)

#### NOTICE OF HEARING:

Pursuant to Massachusetts General Laws, Chapter 40A, Sections 8 and 11, notification of a public hearing for Case 20-36 was advertised on December 2, 2020 and December 9, 2020 in a newspaper of local circulation (*Times Advocate*). The language of this public hearing notice was as follows:

#### Town of Walpole Zoning Board of Appeals

Notice is hereby given that the Board of Appeals of the Town of Walpole will hold a **PUBLIC HEARING** via **ZOOM WEBINAR** on **WEDNESDAY, December 16, 2020 at 7:00 P.M.** on an Application from **Nancy Webster, Case #20-36**, with respect to property located at **52 School Street, Walpole, MA, Zoning District LM.**

This Application is for an Administrative Appeal of the Zoning Enforcement Officer's Violation Notice & Cease & Desist under Section 3.2. of the Zoning Bylaws: Failure to secure a Certificate of Occupancy for the new use of metal & steel manufacturing; Section 5B of the Zoning Bylaws: Schedule of Use Regulations: Heavy manufacturing of steel not allowed in the LM District, resulting in a Noise Violation for the production of loud and offensive noise to the abutters of the business (KW Steel). This Application may be viewed at the office of the Board of Appeals.

RECEIVED  
21 MAR -8 PM 1:12  
TOWN OF WALPOLE  
TOWN CLERK

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## **BACKGROUND AND DELIBERATION:**

On September 16, 2020, Walpole Building Commissioner Michael Yanovitch issued a Violation Notice (the “Notice”) to KW Steel Structures (“KW”) related to operations at KW’s facility located at 52 School Street. The Notice alleged a violation of Section 5-A.1.B. of the Zoning Bylaw (the “Bylaw”) as a result of “[e]xcessive noise from exterior steel assembly causing a nuisance and is obnoxious and offensive to abutters.” The Notice required KW to cease exterior steel fabrication and to submit a plan to reduce excessive noise levels. On September 21, 2020, KW responded that “100% of our fabrication has taken place inside our building”; however, the incident in question was the result of the need to properly torque a few bolts outside the building (as it was not possible to back the trailer into the building) using an impact wrench.

On October 13, 2020, Commissioner Yanovitch issued a Violation Notice and Cease and Desist Order (the “Order”) to KW for activities undertaken at KW’s facility. The Order alleged violations of the Bylaw, “in addition to the September 16<sup>th</sup>, 2020 violation,” as follows:

1. Section 3.2 Certificate of Occupancy:  
Failure to secure a certificate of occupancy. No certificate of occupancy secured for new use of metal and steel manufacturing.
2. Section 5B Schedule of Use Regulations:  
Heavy manufacturing of steel not allowed in the LM district.

The Order required KW to “cease use of structure and land for manufacturing of steel forthwith.”

On October 16, 2020, KW submitted a letter to Commissioner Yanovitch in response to the Order, and on November 4, 2020, KW submitted an appeal of the Order and request for a hearing before the Zoning Board of Appeals (the “Board”). The Board scheduled a hearing on the appeal for December 16, 2020. Prior to the hearing, the Board received submissions from several abutters and others living in close proximity to KW’s facility. These submissions included descriptions and videos of activities at the facility, as well as lists of instances (both pre-dating and post-dating the Notice) the residents alleged were excessively noisy or otherwise bothersome as a result of the handling of steel materials or structures at the facility. See, e.g., Letter from David Lynch, dated December 12, 2020.

In support of its appeal, KW submitted correspondence from its attorney, Mark W. Corner dated December 14, 2020. This letter stated that KW “is a 100% woman-owned steel fabrication company. KW fabricates project-specific, high quality steel for customers in the construction industry.” The letter discussed the facility’s location in the Limited Manufacturing (LM) zoning district, the purpose of which is “to provide an area for low-density wholesale and unobtrusive manufacturing uses.” Referring to Section 5B of the Bylaw, Schedule of Use Regulations, the letter identified the following as among the uses allowed in the LM zoning district:

- p. Heavy machinery (such as agricultural, construction, mining or railroad machinery), metal foundry products, or stone products (such as abrasives, monuments).
- q. Plant for light metal or plastic fabrication or finishing, but not including heavy punch presses or drop hammers.

The letter argued there was a lack of support for the Order's assertion that KW's use of the facility is not permitted by right in the LM district, "noting that KW does not utilize heavy punch presses or drop hammers in its operations," and argued that KW was not aware that a Certificate of Occupancy was required for its use – noting that previous tenants of the facility appear not to have been issued such certificates either.

A hearing before the Board was opened on December 16, 2020. On the subsequent hearing dates of December 21, 2020, January 20, 2021, and February 24, 2021, testimony and argument was heard from Commissioner Yanovitch, KW, Walpole Police Chief Carmichael, and abutters and nearby residents of the KW facility. Three members of the Board visited the KW facility on January 20, 2021 for a site visit to observe the activities within the facility.

At the February 24, 2021 public hearing, the hearing was closed and the matter at hand was deliberated and voted upon. The members who were present and deliberating and voting:

John Lee, Chairman  
Robert Fitzgerald, Clerk  
Mary Jane Coffey, Member  
Drew Delaney, Member  
David Anderson, Associate Member

The Board's deliberation focused first on the question of whether KM's use of the facility is allowed under Section 5B of the Bylaw. The Board reviewed the two use categories referenced by KW as permitting their use by right in the LM zoning district. With respect to Section 5-B.1.5.p (Heavy machinery (such as agricultural, construction, mining or railroad machinery), metal foundry products, or stone products), the Board concluded that KW's operations did not involve the construction of heavy machinery, metal foundry products, or stone products. As indicated in several locations in the record, KW's activities involve the fabrication of steel structures for the construction industry. With respect to Section 5-B.1.5.q (Plant for light metal or plastic fabrication or finishing, but not including heavy punch presses or drop hammers), the Board concluded that this use category permitted only *light* metal or plastic fabrication activities, which does not include the fabrication of heavy steel structural components as undertaken by KW. As a use "not classifiable under any category listed" for the LM zoning district," the Board concludes that KW's use is prohibited under the Bylaw. The Board also noted that KW's use was not consistent with the purpose of the LM zoning district, in that its operations do not constitute "unobtrusive manufacturing uses". The word "unobtrusive" means "not conspicuous or attracting attention," and the record before the Board included many complaints of abutters and nearby residents indicating that KW's operations had been excessively noisy or otherwise attracted the negative attention of the neighborhood.

Because the Board concluded that KW's operations are not allowed in the LM zoning district, it did not reach the question of whether KW required a certificate of occupancy under Section 3.2 of the Bylaw.

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### **VOTE OF THE BOARD:**

**MOTION** made by Ms. Coffey and seconded by Mr. Delaney to deny the appeal of the cease and desist order.

**In Favor:** Robert Fitzgerald, Clerk  
Mary Jane Coffey, Member  
David Anderson, Associate Member

**Opposed:** John Lee, Chairman  
Drew Delaney, Member

**Abstained:** Susanne Murphy, Vice Chair

The vote was three (3) in favor and two (2) opposed resulting in a **vote of 3-2** which failed to attain the necessary votes needed for approval of the motion and therefore did not carry. **The result of this vote allowed the applicant's appeal to move forward for a decision on whether to deny or uphold the Cease and Desist Order.**

**MOTION** made by Mr. Fitzgerald and seconded by Ms. Coffey to affirm the appeal and overturn the Cease & Desist

**In Favor:** John Lee, Chairman

**Opposed:** Robert Fitzgerald, Clerk  
Drew Delaney, Member  
Mary Jane Coffey, Member  
David Anderson, Associate

Member

**Abstained:** Susanne Murphy, Vice Chair

The vote was one (1) in favor and four (4) opposed resulting in a **vote of 1-4** which failed to attain the necessary votes needed for approval of the motion and therefore did not carry. **The result of the vote upheld the Cease & Desist Order.**

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**APPEALS FROM THIS DECISION FOR A SPECIAL PERMIT, IF ANY, SHALL BE MADE PURSUANT TO MASSACHUSETTS GENERAL LAWS CHAPTER 40A, SECTION 17, AND SHALL BE FILED WITHIN 20 DAYS AFTER THE DATE OF FILING OF THE NOTICE OF DECISION IN THE OFFICE OF THE CITY OR TOWN CLERK.**

WALPOLE ZONING BOARD OF APPEALS

Robert Fitzgerald *RFH*  
Robert Fitzgerald, Clerk

Date: March 8, 2021

RF/am

cc:	Town Clerk	Engineering	Planning Board
	Board of Selectmen	Building Inspector	Conservation Commission

This decision was made on February 24, 2021 and filed with the Town Clerk on March 8, 2021.